

CHAPTER NO. 173

HOUSE BILL NO. 1183

By Representatives Shepard, Odom, Bowers

Substituted for: Senate Bill No. 941

By Senator McNally

AN ACT to discourage the deceptive sale or promotion of health-related cash discount cards or other similar items.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. It shall be unlawful and a violation of this act for any person to sell, market, promote, advertise or otherwise distribute any card or other purchasing mechanism or device, which is not insurance, that purports to offer discounts or access to discounts from health care providers in health-related purchases where:

(1) Such card or other purchasing mechanism or device does not expressly provide in bold and prominent type that the discounts are not insurance;

(2) Such discounts are not specifically authorized in a contract with each health care provider listed in conjunction with the card or other purchasing mechanism or device; or

(3) The discounts or access to discounts offered or the range of discounts or access to the range of discounts offered are misleading, deceptive or fraudulent, regardless of the literal wording used.

SECTION 2.

(a) Any person subject to liability under this section shall be deemed, as a matter of law, to have purposefully availed himself of the privileges of conducting activities within Tennessee, sufficient to subject the person to the personal jurisdiction of the circuit or chancery court hearing an action brought pursuant to this chapter.

(b) An action for violation of this section may be brought:

(1) In the county where the plaintiff resides;

(2) In the county where the plaintiff conducts business; or

(3) In the county where the card or other purchasing mechanism or device was sold, marketed, promoted, advertised or otherwise distributed.

(c)

(1) If, in such action, the court shall find that the defendant is violating or has violated any of the provisions of this act, it shall enjoin the defendant from a continuance thereof.

(2) In addition to injunctive relief, the plaintiff in the action shall be entitled to recover from the defendant one hundred dollars (\$100) per card or other purchasing mechanism or device sold, marketed, promoted, advertised or otherwise distributed within Tennessee, or ten thousand dollars (\$10,000), whichever is greater;

(d) The remedies prescribed in the section are cumulative and in addition to the remedies prescribed in Title 47, Chapter 18, Part 1, and any other applicable criminal, civil or administrative penalties.

SECTION 3. Nothing in this act shall be construed to apply to:

(1) Eye or vision care services, glasses or contact lenses provided by an optometrist or ophthalmologist; or

(2) Discount cards provided to members of a nonprofit association as an incidental benefit to membership in the association, provided that membership in such association entitles members to apply for insurance that is available only to members of the association.

SECTION 4. Any person subject to liability under this section shall be required to issue cards complying with the provisions of this section on July 1, 2001, or upon the issuance of a renewed card before July 1, 2002, whichever is later.

SECTION 5. If any provisions of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

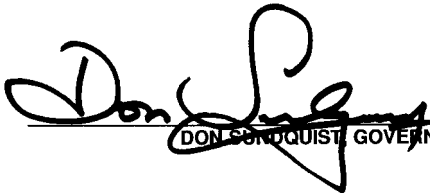
SECTION 6. This act shall take effect July 1, 2001, the public welfare requiring it.

PASSED: April 30, 2001


JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES


JOHN S. WILDER
SPEAKER OF THE SENATE

APPROVED this 3rd day of May 2001


DON SUNDQUIST, GOVERNOR